IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11128 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MIYANA BAI AMINA SULEMAN

Versus

STATE OF GUJARAT

Appearance:

MR PS CHAMPANERI for Petitioner

MR HH PATEL AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 07/02/2001

ORAL JUDGEMENT

#. Challenge has been made by petitioner in this petition who is detained under the Prevention of Antisocial Activities Act, 1985 (hereinafter referred to as `Act') as a `bootlegger' to the order of the District Magistrate, Surendranagar, dated 21.9.2000 passed in exercise of powers conferred under Section 3(2) of the Act.

#. This matter also exhibits clear example that the detention order of the petitioner is nothing but only a

statistical data and deliberately, lacunas have been left out in the order so that he may get himself released by this court.

#. The learned counsel or the petitioner raised manifold contentions challenging the order impugned in this special civil application of the detaining authority, but as this matter deserves acceptance only on one ground, no need to refer, discuss and give finding on all other contentions. This course is adopted otherwise also to save precious and valuable time of the court which is facing serious problem of overcoming pending matters.

#. In paragraph 11 of the special civil application, the petitioner stated that the last case was registered against petitioner on 11.3.2000 and on the very next day, the petitioner was released by the court. This detention order has been made on 21.9.2000, i.e. after about more than six months from the last case registered against the petitioner. This delay has not been explained by respondents. This court expected reply from the respondents to be filed within four weeks. More than three months have passed but nobody has bothered for the respondents to file reply to the special civil application. This is another stage where prima-facie I am satisfied that the respondents have extended favour to the petitioners to make easy for him to get himself released of this detention order. These factual averments made by petitioner stand uncontroverted in absence of reply.

#. This delay of about six months in passing of the impugned order from the date the last offence was registered against the petitioner has not been explained and as a result of which, this petition succeeds and the same is allowed and the order of detention of the petitioner dated 21.9.2000 is quashed and set aside. The petitioner - Miyana Bai Amina Suleman, the detenu, at present at Central Jail Sabarmati, Ahmedabad, be set at liberty forthwith, if she is not required in any other case. Rule is made absolute. The respondent State of Gujarat is directed to pay Rs.3,000= as the costs of this petition to the petitioner.

#. The learned counsel for the respondents strongly opposed awarding of the cost of this litigation to the petitioner by the court. Firstly, it is the discretion of the court to award the costs. So there is little scope for raising such objection by the learned counsel for the respondents. Otherwise also, I consider it to be a fit case to award the costs. The learned counsel for

the petitioner made a statement on being put by the court that he has charged Rs.3,000/= as fees from the petitioner to provide him his professional services in this case and this amount has been paid by the petitioner to him. It is the question of the personal liberty and the petitioner is free to engage any advocate of his own choice. Nobody can compel the petitioner nor any law requires that he has to engage an advocate who charges lesser fees. The advocate is a professional and if any body approaches him to provide his professional services he can charge his own fees. This is not the only money which has been spent by the petitioner but in addition to this he would have spent money for typing charges, court fees and other misc. expenses for filing of the petition but the counsel for the petitioner has not produced any bill of expenses and as such that amount cannot be awarded to the petitioner.

#. The State of Gujarat, an impersonal machinery, is not at fault in the matter. It's only fault is that it has no control over its officers nor it takes its officers to the task for their negligence, recklessness, carelessness and unmindful of the duties which they owe to the people. Because of this negligence, recklessness, carelessness and unmindful of the duty of the concerned officers, reply to the Special Civil Application has not been filed. Whatever the amount comes from the exchequer is a people's money. This money has to be paid to the petitioner by the State of Gujarat not for its own fault, but for the negligence, carelessness, reckless and unmindful of duty of its officer concerned in this matter.

#. The State of Gujarat through the Chief Secretary is directed to hold an inquiry in the matter and whosoever is found responsible for not filing the reply in the matter on the inquiry this amount of the cost is to be recovered from him. This inquiry is to be completed within a period of six months from the date of the receipt of the writ of this order. Compliance of the order be reported to this court by the Chief Secretary. Unless it is scrupulously done and that amount is recovered from those officers who are found negligent, careless and unmindful in discharging of their duties as a result of which the State of Gujarat has to suffer monetary loss, its House may not be corrected.

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(sunil)